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QUESTION OF EAST TIMOR

SECURITY COUNCIL
Forty-sixth year

Letter dated 28 February 1991 from the Permanent Representative of Portugal to the United Nations addressed to the Secretary-General

Further to my letter of 20 February 1991 (A/46/93-S/22249), and on instructions from my Government, I have the honour to convey to you the text of a letter handed to the Minister for Foreign Affairs of Australia by the Ambassador of Portugal at Canberra on 22 February 1991 (see annex).

I should be grateful if you would kindly arrange for the present letter and its annex to be circulated as an official document of the General Assembly, under item 105 of the preliminary list, and of the Security Council.

(Signed) Fernando REINO
Ambassador of Portugal
Permanent Representative to
the United Nations

* A/46/50.

ANNEX

Letter handed on 22 February 1991 to the Minister for Foreign Affairs of Australia by the Ambassador of Portugal at Canberra

Upon instructions from my Government, I have the honour to kindly request your attention to the following:

The Portuguese Government is aware that Australia is on the way of extending the exploration for and the exploitation of the natural resources of the Timor Sea's subsoil, as well as the practice of related acts of jurisdiction, closer to East Timor's coastline, inside the area known as "Timor Gap", located between East Timor's southern coast and Australia's northern coast. Those activities are supposed to be undertaken beyond the median line, every point of which is equidistant from the nearest points of the baselines from which the breadths of the respective territorial seas are measured. Besides, those activities are also expected to be carried out in the very inside of the so-called "Timor Trough", situated close to the Timor coastline.

This extension is based on a bilateral instrument, concluded not with Portugal, the administering Power of the non-self-governing territory of East Timor, recognized as such by the United Nations, but with a third country instead, any negotiation with Portugal having been precluded.

The Portuguese Government is of the opinion that the negotiation, the signature, the ratification and the implementation of the Australian-Indonesian "Treaty", signed on 11 December 1989, constitute a very serious violation of some of the most basic rules of international law, namely, those pertaining to the right to self-determination of peoples, to the territorial integrity of non-self-governing territories and to the permanent sovereignty of peoples over their natural resources. Moreover, they plainly disregard the Charter of the United Nations and the authority assigned to its main bodies. This has been consistently made known to the Australian Government.

Besides this, the Portuguese Government considers that, even independently of their title, the exploration for and the exploitation of the natural resources located in "Timor Gap's" continental shelf, be it direct or indirect, alone or together with any other country, are abusive and illicit without Portugal's consent, taking into account its capacity as the administering Power of East Timor. In fact, they violate also the rights provided to the territory of East Timor under the provisions of article 2 of the Convention on the Continental Shelf, done at Geneva on 29 April 1958. The same applies to any act of jurisdiction related to that exploration or exploitation, as well as to the collection of any revenues deriving from them. It is also the Portuguese Government's understanding that all the acts and activities described above undertaken beyond the median line, every point of which is equidistant from the nearest points of the baselines from which the breadths of the territorial seas of East Timor and Australia are measured, constitute a violation of those rights.

As a matter of fact, Portugal has always affirmed and still affirms, that, under the provisions of article 1, complemented by international custom, and of article 6, paragraph 1, of the Convention on the Continental Shelf, done at Geneva, on 29 April 1958, the boundary of the continental shelf appertaining to East Timor and to Australia is and shall continue to be the median line, every point of which is equidistant from the nearest points of the baselines from which the breadths of the respective territorial seas are measured. In accordance with the provisions of the aforesaid article 6, paragraph 1, of the Convention on the Continental Shelf, done at Geneva, on 29 April 1958, article 1, paragraph 3, of "Decreto-Lei" 49.369, of 11 November 1969, extended to East Timor on 22 November 1969, and still in force, states that: "unless an agreement has been concluded with a State whose coasts are adjacent or opposite to those of the Portuguese State, and providing that no special circumstances justify a different boundary line, the boundary of the continental shelf is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadths of the respective territorial seas are measured".

Portugal, in its capacity as administering Power of the non-self-governing territory of East Timor, is obliged, under the provisions of Article 73 of the Charter of the United Nations, to promote to the utmost, within the system of international peace and security established by the Charter, the well-being of the inhabitants of that territory. It is therefore also incumbent upon it the responsibility of defending and promoting the rights of the East-Timorese. Thus, Portugal, in addition to what it has already stated before, namely, through the verbal note of protest handed over to the Department of Foreign Affairs on 11 February 1991, hereby notifies the Australian Government that:

The exploration for and the exploitation of the natural resources of the Timor Sea's seabed and subsoil, in the area known as "Timor Gap", as well as any other connected activities, carried out directly or indirectly, alone or together with any other country, including the practice of related acts of jurisdiction or the collection of any revenues deriving from them, undertaken beyond the above-mentioned median line (and, in all cases, when extended to where Australia has announced its intention to undertake them), without Portugal's consent and not even with any attempt to negotiate the matter with Portugal, constitute, furthermore, a violation of the rights provided to the territory of East Timor under the provisions of article 2 of the Convention on the Continental Shelf of 29 April 1958.

Portugal and Australia are both parties to the Convention on the Continental Shelf, done at Geneva, on 29 April 1958, as well as to the Optional Protocol of Signature concerning the compulsory settlement of disputes arising out of the interpretation or application of any article of any convention on the law of the sea, of 29 April 1958, whose article 3 reads as follows:

> "The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry to the said period, either party to this Protocol may bring the dispute before the Court by an application."

In accordance with and for the purposes of the aforesaid article 3, the Portuguese Government, in the fulfilment of its duties as the administering Power of the non-self-governing territory of East Timor and, namely, in the defence of the rights of its people, hereby notifies the Australian Government that:

(a) It considers that the boundary of the continental shelf appertaining to East Timor and to Australia, in the area known as "Timor Gap", is and shall continue to be the median line, every point of which is equidistant from the nearest points of the baselines from which the breadths of the respective territorial seas are measured;

(b) It considers that the exploration for and the exploitation of the Timor Sea's seabed and subsoil in the area known as "Timor Gap", as well as any other connected activities, carried out by the Government of Australia, directly or indirectly, alone or together with any other country, including the practice of related acts of jurisdiction or the collection of any revenues deriving from them, beyond the above-mentioned median line (and, in all cases, when extended to where Australia has announced its intention to undertake them), without Portugal's consent and not even with any attempt to negotiate the matter with Portugal, constitute a violation of the rights provided to the territory of East Timor under the provisions of article 2 of the Convention on the Continental Shelf of 29 April 1958;

(c) It considers that a dispute exists between Australia and Portugal concerning the questions referred to above, questions which concern the interpretation and the application of articles 1, 2, and 6, paragraph 1, of the Convention on the Continental Shelf of 29 April 1958.

As a consequence of the existence of the aforesaid dispute between Australia and Portugal, the Portuguese Government proposes to the Australian Government that negotiations be held aiming at agreeing upon a mutually acceptable form of settlement of the dispute. This would not, of course, be detrimental to the holding of negotiations on the very substance of that dispute, which have been hitherto precluded by the Australian Government.

The Portuguese Government reserves itself the right to bring the entire dispute referred to above before the International Court of Justice, or a part of that dispute, as provided by article 3 of the above-mentioned Optional Protocol of 20 April 1958. This cannot be construed as a renunciation to any other rights or to the possibility of resorting to the Court to uphold them.

My Government will forward a copy of this note to the Secretary-General of the United Nations, taking into account the provisions of Chapter XI of the Charter and also the mandate entrusted to him by General Assembly resolution 37/30 of 23 November 1982.